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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,180	12/20/2000	Vincenzo D'Acchioli	CM1987QVB	8836

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

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DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/720,180

Applicant(s)

D'ACCHIOLI ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Specification

~~The amendment filed 14 November 2003 is objected to under 35 U.S.C. 132~~
because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The placement of the absorbent material on the inner surface of the inner lining is not disclosed in the specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-6 and 10-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The placement of the absorbent material on the inner surface of the inner lining is not disclosed in the specification. The specification discloses, on page 10, lines 6-8, the absorbent material may be secured to the inner layer of the bag, but does not specifically disclose the absorbent material secured to the inner surface of the inner layer. Claim 12 further discloses a second

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absorbent material that is not joined to the inner lining. The combination of a first absorbent material joined to the inner lining and a second absorbent material not joined to the inner lining is not disclosed in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Schneider et al. (5,417,677).

Schneider discloses a flexible bag 10, as shown in figure 2, comprising an aperture 20 and a flange 21 surrounding the aperture 20. The flange 21 has a wearer facing portion and a garment facing portion, the wearer facing portion comprising a layer of adhesive 22. The flange 21 is provided with at least one non-adhesive lobe 21a, as shown in figure 2. The flexible bag 10 comprises an inner lining 15, as shown in figure 2, opposite the aperture 20. The flexible bag 10 further comprises an absorbent material 25 disposed on the inner lining 15, as shown in figure 5, and described in column 5, lines 47-54. The flexible bag 10 is fully capable of being attached to the urogenital area of a wearer to collect urine.

With respect to claim 2, the flange 21 comprises at least two non-adhesive lobes, as disclosed in column 4, lines 46-50.

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With respect to claim 3, the flange 21 comprises one lobe 21a positioned at the upward end of the flange 21, as shown in figure 1.

~~With respect to claim 4, the non-adhesive lobe 21a is located about the~~
longitudinal axis of symmetry of the flexible bag 10, as shown in figure 1.

With respect to claim 5, a release means 23 covers the layer of adhesive 22 and the non-adhesive lobe 21a, as shown in figure 2.

With respect to claim 10, the absorbent material 25 is tissue, as disclosed in column 5, lines 47-54, which comprises wood pulp.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al. (5,417,677) as applied to claim 1 above, and further in view of Allen, Jr. et al. (4,561,858).

Schneider discloses all aspects of the claimed invention with the exception of the release means extending beyond the edges of the flange. Allen, Jr. discloses a bag for collecting body fluids, as shown in figure 3, comprising an aperture 14 and a flange 26. The flange 26 is tacky so it may adhere to the skin of the wearer, as disclosed in column 4, lines 25-34. The adhesive flange 26 is covered with a release means 28, which extends beyond the edges of the flange 26 to protect the flange 26 from dust prior to

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use. The free edges of the release means 28 provide a convenient place for gripping the release means 28 in order to remove it from the flange 26, as disclosed in column 4, lines 39-45.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to extend the release means of Schneider beyond the edge of the flange in order to provide a free edge of the release means that may be more easily gripped while removing the release means from the flange, as taught by Allen, Jr.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider et al. (5,417,677) as applied to claim 10 above.

Schneider discloses all aspects of the claimed invention with the exception of absorbent gelling materials. Absorbent gelling materials are well-known in the art to offer superior absorbent qualities. It would therefore be obvious to one of ordinary skill in the art at the time of invention for the absorbent material of Schneider to comprise absorbent gelling materials to improve the absorbent qualities of the absorbent material.

Response to Arguments

Applicant's arguments filed 14 November 2003 have been fully considered but they are not persuasive.

During the telephonic interview of 22 October 2003, no agreement with respect to the claims or the validity of the rejection under 35 U.S.C. 112, first paragraph was reached. Agreement was reached that the instant specification does provide basis for securing the absorbent material to one side or the other of the inner layer. Agreement was not reached, however, that the matter was not of a genus/species relationship. It is

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the Examiner's position that the matter is of a genus/species relationship. The limitation in the claims disclosing one species (i.e. securing the absorbent material to *the inner surface of the inner lining of the bag*), while the specification supports only the generic teaching (i.e. securing the absorbent material to the inner layer of the bag) constitutes new matter, and must be cancelled.

With respect to the Applicant's argument that the limitation disclosing securing the absorbent material to the inner surface of the inner lining of the bag is supported by the knowledge of ordinary skill in the art, it is noted that the knowledge of ordinary skill in the art is moot in the case of new matter. The new matter is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. One skilled in the art would recognize the inventors, at the time the application was filed, had possession of the generic teaching of securing the absorbent material to the inner lining of the bag. Lacking of specific teaching of securing the absorbent material to the inner surface of the inner lining, however, one skilled in the art would not recognize the inventors, at the time the application was filed, had possession of the species disclosed in the claims. The rejection of claims 1-6 and 10-12 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is therefore proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


cla

January 26, 3004



GLENN K. DAWSON
PRIMARY EXAMINER